

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
vs.)	Case No. 14-CV- 47-MJR-SCW
)	
JAMES L. POWERS,)	
)	
Respondent.)	
)	
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)	
)	

ORDER ADOPTING REPORT AND RECOMMENDATION

REAGAN, District Judge:

On January 14, 2014, the Petitioner United States of America filed a Petition to Enforce IRS Summons (Doc. 2) pursuant to the provisions of Section 7402(b) and 7604(a) of the Internal Revenue Code, 26 U.S.C. §§ 7402(b) and 7604(a). Revenue Officer Sheila L. Pratcher issued an IRS summons on Respondent James Powers directing him to appear on September 12, 2013 to give testimony and provide documents relevant to his tax liability for the tax periods ending December 31, 2004 and December 31, 2009; and the civil penalty under I.R.C. § 6672 for the quarterly tax period ending December 31, 2007 (Doc. 2). Respondent failed to appear in response to the summons on September 12, 2013 and has not provided any of the summonsed materials (Doc. 3). On September

30, 2013, a letter was sent to James Powers and to his authorized representative by the IRS Office of Chief Counsel proposing an alternate date to comply with the Summons, scheduled for October 22, 2013 (Doc. 2, p. 2). Respondent, however, again failed to appear on that date. On January 14, 2014, the United States of America then filed in this Court a Petition to Enforce Internal Revenue Summons (Doc. 2). Respondent was then ordered to show cause as to why he should not be compelled to comply with the IRS summons, and the matter was set for hearing on April 2, 2014 (Doc. 6).

On March 17, 2014, Respondent filed a Statement of Opposition (Doc. 7). He reiterated these same arguments at the hearing that took place on April 2, 2014. Specifically, Respondent asserted that this Court does not have jurisdiction over the matter, which Magistrate Judge Williams rejected outright. However, Magistrate Judge Williams expressed concern that the Government had not met its burden to present sufficient evidence that an Order to Enforce Summons should be issued. Thus, Magistrate Judge Williams took the matter under advisement.

On April 10, 2014, Magistrate Judge Williams entered a Report and Recommendation on this issue (Doc. 10). In the Report, Judge Williams finds that the Government has met its *prima facie* burden (Doc. 10, p. 3). The Report & Recommendation gave the parties until April 28, 2014 to file an objection. No objections have been filed.

Where timely objections are filed, this Court must undertake a *de novo* review of

the Report and Recommendation. 28 U.S.C. § 636(b)(1)(B), (C); FED. R. CIV. P. 72(b); SDIL-LR 73.1(b); *Harper v. City of Chicago Heights*, 824 F. Supp. 786, 788 (N.D. Ill. 1993); *see also Govas v. Chalmers*, 965 F.2d 298, 301 (7th Cir. 1992). The Court “may accept, reject or modify the magistrate judge’s recommended decision.” *Harper*, 824 F. Supp. at 788. In making this determination, the Court must look at all of the evidence contained in the record and “give ‘fresh consideration to those issues to which specific objections have been made.’” *Id.*, quoting 12 Charles Alan Wright et al., *Federal Practice and Procedure* § 3076.8, at p. 55 (1st ed. 1973) (1992 Pocket Part).

However, where neither timely nor specific objections to the Report and Recommendation are made, pursuant to 28 U.S.C. § 636(b), the Court need not conduct a *de novo* review of the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985). While a *de novo* review is not required here, the Court has considered the record and Magistrate Judge William’s Report and Recommendation and fully agrees with the findings, analysis, and conclusions of Magistrate Judge Williams. Specifically, the undersigned District Judge agrees that the Government’s affidavit meets all of the requirements of *United States v. Powell*, 379 U.S. 48, 57-58 (1964) and the Government has met its minimal burden of proof.

The Court **ADOPTS** Magistrate Judge Williams’ Report and Recommendation (Doc. 10) and **DENIES** Respondent’s objections to the enforcement of the summons, and therefore **DIRECTS** the enforcement of the IRS summons. Further, the Court

DIRECTS Respondent to comply with the summons and **ORDERS** Respondent's attendance, testimony, and production of the books, records, papers, and other data as required by the terms of the summons before Revenue Officer Pratcher or any other proper officer of the IRS. Should Respondent fail to comply, Respondent will be found in civil contempt and sanctioned \$100.00 on a daily basis until he complies with the terms of the summons in order to compel him to do so.

IT IS SO ORDERED.

DATED: May 8, 2014

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge